

REMARKS

The application has been reviewed in light of the Non-Final Office Action mailed January 14, 2005. At the time of the Non-Final Office Action, claims 1-26 were pending in this application. The Examiner has indicated that claims 1-12 are allowable. The Applicant gratefully acknowledges the allowability of these claims.

The Examiner has objected to drawings for failing to show every feature of the invention, in particular, the bucket elevator recited in claims 7 and 20. The Applicant has added new Figure 3 to illustrate the embodiment of the invention employing a bucket elevator. No new matter is added to this application by the addition of Figure 3, as the elevator bucket is clearly disclosed in the original specification at paragraph [0013]. Applicant believes that this amendment overcomes the Examiner's objection to the drawings. The Applicant also amended Figures 1-2 to correct some minor errors in several of the leader lines. The corrections made are illustrated in the annotated marked-up copies of the figures in Exhibit 2 hereto. No new matter is believed added by these corrections.

The Examiner has objected to claims 18, 20, and 24 as being based on a rejected base claim, but has indicated that these claims would be allowable if rewritten in independent form. The Examiner has also rejected claims 13-17, 19, 21-23, 25 and 26 in view of prior art. For the reasons discussed below, the Applicant believes that all of the remaining claims are patentable over the cited prior art, and therefore respectfully traverses the Examiner's rejection.

Rejection under 35 U.S.C. § 103(a)

The Examiner rejected claims 13-17, 19, 21-23, 25 and 26 under 35 U.S.C. § 103(a) as being unpatentable over Nordmeyer '632 et al. (U.S. Patent No. 4,991,632).

Nordmeyer et al. disclose an apparatus and method for gently packing a food item, such as dried peas. According to the Examiner, Nordmeyer '632 et al. disclose a “dispensing apparatus comprising a ‘storing means’ 13, a supplying means (see auger-type conveyor mounted about horizontal shaft 8 that is arranged to facilitate flow tangential thereto), and a metering means 33 with associated chute 3.” Office Action dated January 14, 2005 at 3. The storing means 13 in Nordmeyer '632 et al., however, is an open tank and not an enclosed tank, such as the one being claimed by Applicant. Also, there is no disclosure in Nordmeyer '632 et al. that the material being conveyed is a dry powder or granular material. Furthermore, there does not appear to be any disclosure in Nordmeyer '632 et al. that the purported supplying means (8) meters the food items at a bulk rate that exceeds the rate at which the metering means (33) conveys the food items.

Turning specifically to the claims, Nordmeyer '632 et al. fails to teach or suggest “means for supplying the metering means with the dry powder or granular material at a bulk rate that exceeds the rate at which the metering means conveys the dry powder or granular material and in a substantially enclosed environment,” as required by independent claim 13 for the reasons discussed immediately above. Furthermore, Nordmeyer '632 et al. fails to teach or suggest “supplying the metering feeder with dry powder or granular material at a bulk rate that exceeds the rate at which the metering feeder conveys the dry powder or granular material and in a substantially enclosed environment,” as required by independent claim 26 also for the reasons discussed immediately above.

Furthermore, the Examiner fails to explain why the missing elements of the rejected claims would have been obvious in view of Nordmeyer '632 et al. Additionally, the motivation is lacking as to why a person of ordinary skill in the art would modify Nordmeyer '632 et al. to arrive at the Applicant's invention as claimed in the rejected claims. Finally, the object of Nordmeyer '632 et al. itself, which is to gently pack a food product, would not lead a person of ordinary skill in the art to Nordmeyer '632 et al. in the first place in trying to solve the problem of accurate metering a dry powder or granular material and minimizing the loss of such material. Therefore, independent claim 13, and claims 14-17, 19, 21-23 and 25 dependent therefrom, and independent claim 26, are believed patentable over Nordmeyer '632 et al. Accordingly, the Examiner's rejection of these claims over Nordmeyer '632 et al. should be withdrawn.

SUMMARY

In light of the above amendments and remarks, Applicant respectfully submits that the application is now in condition for allowance and early notice of the same is earnestly solicited. Should the Examiner have any questions, comments or suggestions in furtherance of the prosecution of this application, the Examiner is invited to contact the attorney of record by telephone, facsimile or electronic mail, as indicated below.

Applicant believes that there are no fees due in association with the filing of this Response. However, should the Commissioner deem that any fees are due, including any fees for any extensions of time, Applicant respectfully requests that the Commissioner accept this as a Petition therefore, and directs that any fees be debited from Baker Botts L.L.P., Deposit Account No. 02-0383, (*formerly Baker & Botts, L.L.P.*) Order Number 063718.0378.

Respectfully submitted,

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ANNOTATED MARKED-UP DRAWING

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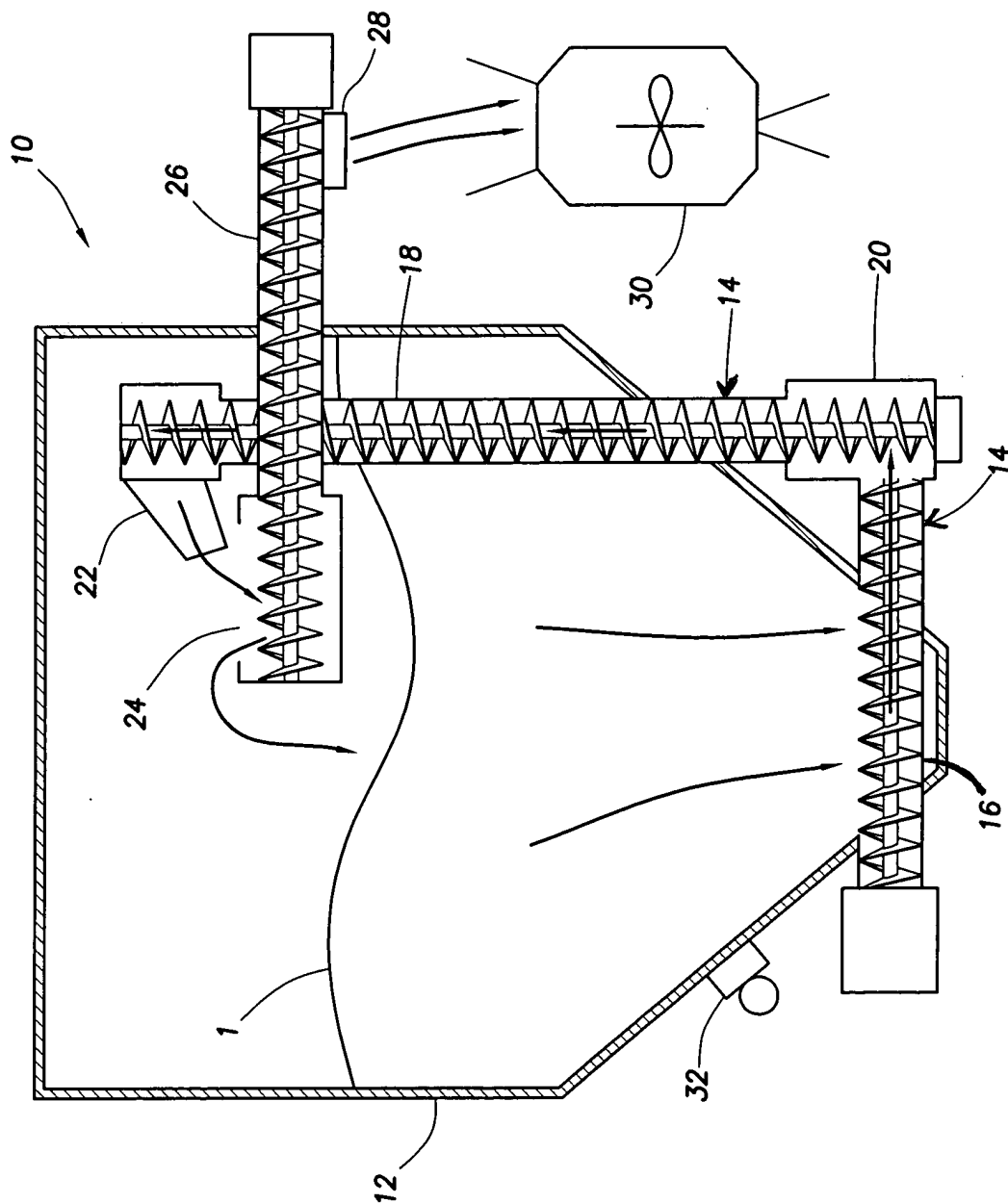


FIG. 1

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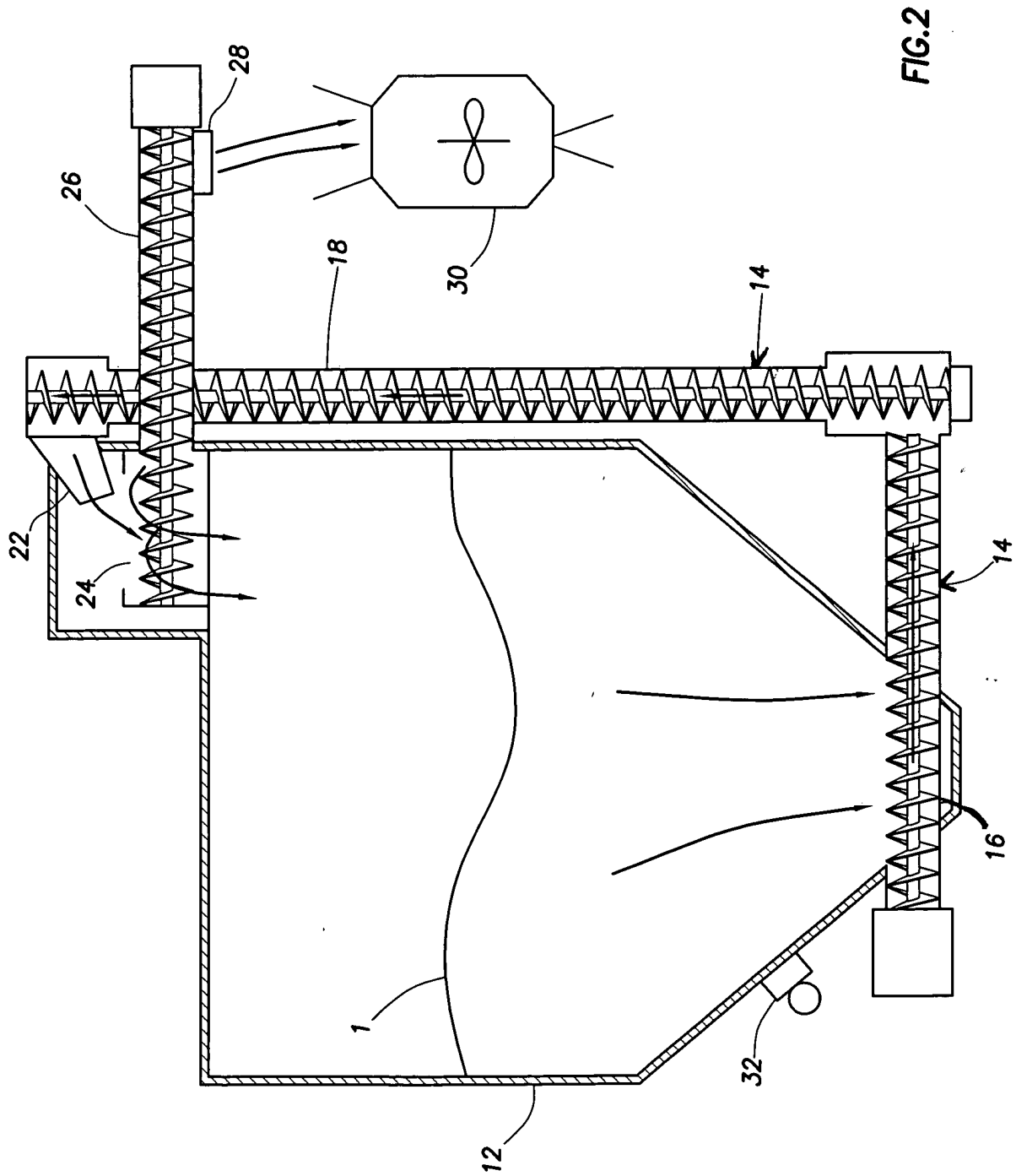


FIG. 2